

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

S.T.R. 36 of 2003

(Old No. 691 of 1991)

Date of decision :- 13-7-2006

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 13-7-2006

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Sales Tax Revision No. 36 of 2003

{Old No. 691 of 1991}

M/s Anand Brick Field Dhanpura Haridwar	Applicant/Revisionist
Versus	
The Commissioner Sales Tax U.P. Lucknow	... Respondent

Mr. Parikshit Saini learned for the revisionist.

Mr. P. Maulkhi learned Addl. Advocate General for the respondent.

Hon'ble J. C. S. Rawat, J.

1. Heard learned counsel for the parties.
2. This revision, preferred under section 11 of the U.P. Sales Tax Act, 1948, is directed against the judgment and order dated 31.03.1990, passed by the Sales Tax Tribunal, Dehradun Bench, Dehradun in Second Appeal Nos. 166/1984 & 100/1985.
3. The brief facts for disposal of this revision are that the assessee is the maker of bricks. The assessing authority has assessed the tax of Rs.42,670/- on the turnover of the assessee. Feeling aggrieved by this, the assessee-revisionist preferred an appeal and the said amount was reduced to Rs.22,280/- to the assessee. Feeling aggrieved by this, the department as well as the assessee preferred appeals before the Sales Tax Tribunal. After hearing the appeals, the Tribunal vide its order dated 31.03.1990 further reduced the tax of Rs. 36000/- and the net tax remained Rs.18,1680/-. Feeling aggrieved by this, the assessee has preferred this revision before this Court.
4. It was contended on behalf of the revisionist that the assessing authority did not detect any mistake in the accounts books maintained by the assessee in the regular

course of the business. It was further contended that the survey report is based on irrelevant materials and the survey was not properly conducted. The surveyor was not justified to hold that the assessee was running the business of bricks more than two rounds during the assessment year. It was contended that the assessee was an inexperienced in the field of making bricks, hence he was running the said 'Bhatta' to test the quality of the bricks which is to be produced in the next assessment year. The Tribunal considered the entire facts and circumstances of the case and came to the conclusion that the assessee had indicated in his book of accounts that he had not produced the bricks in the second season. The survey was conducted on 13.12.1979 and 22.02.1980 and it was found that the said Bhatti was running and the production was under process. The explanation was submitted by the assessee was not found sufficient and the same was rejected. It is further revealed from the record that at the time of survey 2/3rd of the 'Bhatti' was filled with bricks and 4 lakhs bricks were found outside the 'Bhatta'. It was further found that 400 quintals of fuel wood was used for that period. These facts lead to take an inference that the Bhatta was not being run for the trial basis and it was running continuously. Thus, the survey report was correct. The finding of the learned Tribunal requires no interference on this point.

5. It was further contended that the rate of the bricks determined by the authorities was exorbitant and the rates determined by the authorities are against the facts on record. It was further contended that the rates which had been mentioned in the order pertain to the assessment year 1980-81. Perusal of the survey report clearly indicates that the rate of bricks was Rs.155/- at

the time relevant time. The Tribunal had also held that in the year 1980-81 there was a rate of Rs.130/- and Rs.126/-. After considering the survey report and the rates prevailing immediately after the assessment year, the Tribunal has assessed the rate of Rs. 120/-. Learned counsel for the revisionist has pointed out that the account books maintained by the assessee only reveals that the rate was Rs.85/-. When the account books had been found regular there was no reason to disbelieve the said rates shown by the assessee. The survey was conducted and the survey report reveals that the prevalent rate at the relevant rate was Rs.155/-. Thus, in the facts and circumstances of the case the assessment made by the Tribunal does not require any interference.

6. In view of the aforesaid discussion, there is no error of law committed by learned Sales Tax Tribunal. As such, the revision is liable to be dismissed. Therefore, the revision is dismissed accordingly.

(J. C. S. Rawat, J.)

Dated 13.07.2006
LSR